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AUTHOR Graham, Peter J.
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ABSTRACT

This paper focuses on Title IX, a part of the Federal Education Amendments of 1972, and its effect upon human rights in school sport. The paper is divided into three sections. The first section reviews the purpose of Title IX and the historical developments which led to its establishment. It states that Title IX was enacted to eliminate sexual discrimination in educational programs and activities, since until recent years few opportunities for women to engage in sport and athletics had been provided by society. The next section deals with the implications of Title IX as it relates to educational institutions. It states that application of Title IX to secondary school sport will take time, continued effort, and patience. The paper mentions that the generalities of the law, the lack of specific guidelines, and the hesitancy of many administrators to respond to the need for change will undoubtedly contribute to its slow implementation. In the final section Title IX is reviewed from a legal basis. An examination of precedent-setting judicial decisions relating to discrimination by sex from a variety of perspectives is presented. In addition, a case is developed to demonstrate existing parallels between decided racial discrimination cases and possible future sexual discrimination cases. (RC)

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TITLE IX: HUMAN RIGHTS IN SCHOOL SPORT

Peter J. Graham

University of Massachusetts at Amherst

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Paper prepared for the Twenty-Sixth Annual Conference of the National Intramural Association, International Hotel, New Orleans, Louisiana, March 24-27, 1975.

TITLE IX: HUMAN RIGHTS IN SCHOOL SPORT

A. The History of Title IX a Part of the Federal Education Amendments of 1972

B. The Implications of Title IX as Applied to Educational Institutions

C. Title IX From a Legal Perspective - A Look at Historic Legal Parallels

TITLE IX: HUMAN RIGHTS IN SCHOOL SPORT

On June 23, 1972, the United States Congress enacted the Education Amendments of 1972.[1] Title IX of this legislation reads:

> No person in the United States shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance....

These thirty-seven words represent a major accomplishment for the various interest groups that have diligently worked towards the institution of equal human rights within the process of education. It is the intention of the writer to focus on the effects that this landmark legislation will produce within a specific area of education - secondary school sport.

Historical Events Leading to Title IX

The obvious goal of Title IX is the elimination of sexual discrimination in educational programs and activities. Discrimination of this nature historically has had deep roots within the educational processes and the predominate, but not exclusive, target of such discrimination has been the female of the species.

Alexis de Tocqueville wrote in the nineteenth century that, "A democratic education is indispensable to protect women from the dangers with which democratic institutions and manners surround them."[2] The quest for equality has been a continual goal sought by numerous dedicated groups and individuals.

Robin Dorr writes that, "Historically, women's rights in education began in 1852 when Susan B. Anthony persuaded the New York State Teachers Association to recognize the 'rights of female teachers to share in all the

privileges and deliberations of that body'. During the 120 years following Miss Anthony's blast, signs of progress in the women's movement were few and far between. In 1961 a President's Commission on the Status of Women declared that discrimination against women in education remained a basic fact of life. In September of 1965 when President Johnson issued Executive Order 11246 forbidding all federal contractors from discriminating in employment because of race, religion, color, or national origin, activist critics regarded it noteworthy primarily for its silence about the rights of women."[3]

Dorr further states that, "The breakthrough in the wall of sex discrimination actually came in October of 1967 with the issuance by President Johnson of Executive Order 11375, which amended the previous nondiscrimination order to prohibit discrimination because of sex. Thus today, any educational institution holding federal contracts faces loss of those contracts if it practices sex discrimination in employment. Moreover, the Order goes beyond good intentions by requiring 'affirmative action'."[4]

Passage of the Civil Rights Act of 1964[5] generated new hope for groups seeking total discrimination relief. In as much as the Civil Rights Act prohibited discrimination by virtue of race, the most blatent form of discrimination remaining to be eliminated was that of sex. However, attempts at developing legislation prohibiting this form of discrimination received frequent set-backs. "Legislatures and courts at all levels, reflecting views held in many parts of American society, perceived sex discrimination as less onerous or less invidious than discrimination based upon race, color, or national origin."[6]

The world of sport and athletics has historically been considered to be the male's domain. Women have been characterized by the Victorian image -

physically weak, dependent upon the male, and abhored by the thought of engaging in physical competition amongst themselves. Consequently, until recent years few opportunities for women to engage in sport and athletics have been provided by society. Initial encouragement for females to engage in competitive sport developed within the educational institutions of Wellesley and Vassar. Traditionally, women's programs have focused on instruction and subsequent participation in the so-called lifetime sports. Instruction usually took place in the physical education classes whereas the participation phase was accomplished via a "play day" with another institution. This concept eventually spread to the secondary schools. On the other hand, male participation in secondary school sport has had a long history dating back to the 1800's.

The concept of athletics and sport has often been difficult for many people to cope with simply because indulgence in such activities evokes clear, discernable societal reactions - reactions based upon deeply rooted established norms. Sport and athletic norms developed as the result of society's perception as to what constituted "right" and "wrong" with respect to male and female participation in sport. The dominant theme has usually been that the male should be involved in competitive sport because it provided him with an opportunity to demonstrate qualities of strength, aggressiveness, achievement, self-confidence, fitness, and leadership/followership. On the other hand, the female was discouraged from sport participation because those qualities which the male demonstrates via sport are diametrically opposed to those qualities to which the female should aspire. Consequently, the perpetuation of these societal norms have made it difficult for the female who wants to participate in competitive

sport to gain support from the existing power structures. The result of societal pressure on female participation in sport is exemplified by a 1971 court decision which denied a young woman the right to participate on a Connecticut high school cross country team. The judge concluded that,

> "The present generation of our younger male population has not become so decadent that boys will experience a thrill in defeating girls in a running contest, whether the girls be members of their own team or an adversary team...Athletic competition builds character in our boys. We do not need that kind of character in our girls, the women of tomorrow...."[7]

Throughout the country, rules, policies, and antiquated attitudes towards sport and sport participation have been under fire. Carol Gorden, president of the Association for Intercollegiate Athletics for Women, stated that, "The most positive sign of change is that people are taking a critical look at the situation and are coming to grips with the idea of women's sports."[8] In Massachusetts the Great and General Court voted passage of Chapter 622 of the Legislative Acts of 1971. Chapter 622 prohibits exclusion from any school or school program/activity based upon race, color, religion, national origin, or sex. Congress, prompted by the tireless efforts of various anti-discrimination groups, formulated, proposed and enacted the Education Amendments of 1972.

In the Congressional debate which took place prior to the enactment of the Educational Amendments of 1972, Congresswoman Martha Griffiths made the following statement about women and sports:

> "If winning is not everything, as many of my colleagues no doubt have informed their children after an excruciating loss in an athletic contest, and if sports really do help build character as well as sound minds and bodies, then why should men have a monopoly on our athletic facilities and resources? In my opinion, they should not."

The Implications of Title IX as Applied to School Sport Programs

The Educational Amendments of 1972, of which Title IX is a part, was enacted by Congress on June 23, 1972. Title IX was written eight years after the passage of the 1964 Civil Rights Act. Title IX is different in that it is limited to educational programs and activities. The express purpose of Title IX is to close the gap in the laws provided to protect individuals from biased educational policies.[10]

A reading of Title IX indicates that the law is written in rather loose terms. However, "It is not unusual for a statute with a broad social purpose to be written in general terms rather than in detailed listings of prohibitions. Title IX is written in a fashion similar to Title VI of the 1964 Civil Rights Act which prohibits racial discrimination in any program or activity receiving federal financial assistance....where legislative history is silent, primary consideration should be given to effectuating the purpose of the law rather than narrowly limiting the law's application."[11]

In an effort to develop operable guidelines, DHEW has published a document containing the proposed guideline regulations for Title IX. The general public has been requested to review the regulations, and to submit comments as to needed revisions, additions, or deleations. October 15, 1974 was the terminal date for submittance of comment. Following that date, the DHEW will review received material, possibly make the changes and then submit

the final regulations to the President for his signature. Regardless of the fact that the guideline regulations have not formally been adopted, Title IX is the law and compliance with its specifics must be adhered to. However, to the writer's knowledge, no judicial decisions to date have been rendered based on Title IX, although several cases based on Title IX have been entered into litigation.

Federal law does not presume to dictate what specific philosophy or practices an institution must follow concerning sport. This is an educational decision which belongs to those who formulate educational policy at an institution. However, "Federal law does require that once a practice or philosophy is determined, it be applied equally regardless of sex and that it not have a disproportionate impact on one sex."[12]

Celeste Ulrich believes that, "There are few places in education where there has been such blatent sexual discrimination as in departments of physical education. As the only sex-identified body of knowledge in the school curriculum (you do not have boys' math and girls' math or mens' physics and womens' physics), physical education has tolerated pervasive forms of sexual inequality. Facilities, equipment, and personnel for the female program have always been regarded as less important than those of the male."[13] Certainly Ulrich's comments have been based on years of experience in attempting to deal with the societal norms attached to the participation of women in sport.

Title IX exerts an impact on secondary school sport programs via a number of avenues. "The January 31 draft (Title IX regulations) provides that sex shall not be the basis for denying participation in physical education programs or non-competitive athletics. Sports and other activities for which instruction is offered is not to be chosen so as to discriminate on the ba-

of sex. The draft regulations provide that an educational institution may not provide any athletics separately on the basis of sex. In general, physical education programs, classes and non-competitive sports would be open to both sexes and administered on that basis."[14] The issue of competitive athletics, "is treated differently under the draft regulations. First, students are to be provided an equal opportunity to participate in competitive athletics. Second, there is to be no discrimination in the selection of sports or levels of competition; equipment and supplies are to be provided without discrimination; game schedules, practice times, travel per diem allowances are to be administered without discrimination; athletic scholarships are to be awarded without sex discrimination. All prerequisites to competitive sports are to be established without sex discrimination -- including coaching and instruction, assignment of coaches and instructors, provision of locker rooms, practice and play facilities, medical and training facilities."[15]

One area covered by Title IX, in vocational schools but not in secondary and elementary schools is that of admissions. However, an institution, if in receipt of federal financial assistance, can not discriminate against any student once enrolled.

The inequitable distribution of budgetary allocations for boys' and girls' athletic and physical education programs is also prohibited.[16] To comply with the law many school systems will have to undertake drastic revisions of budget allocations in the areas of physical education programming and facility provisions. In the realm of sport, competitive and non-competitive, it seems reasonable to assume that some women will participate on what have been traditionally male teams and vice versa for men. The writer is of the opinion

that elimination of separate male and female competition is doubtful. The main future difference will be the provision of equal competitive athletic opportunities for both men and women.

It is the writer's position that to provide equal opportunity for male and female students, parallel sport programs will be needed. In the case of single team programs, the opportunity to make the team should be extended to both sexes. In situations in which the parallel program system exists, if an individual is not being afforded a competitive challenge equal to his/her ability within his/her program, then he/she should be allowed the opportunity to attempt to qualify for a position on the opposite sex team. For purposes of clarification, the writer defines "challenge" strictly in terms of upward mobility. An individual not possessing the ability to make the team provided for his/her sex in a parallel team program would be prohibited from seeking a position on the opposite sex's team.

With respect to the question of "mixed" participation in contact and non-contact sports, the writer is of the belief that regardless of the form of the activity, all rules governing participation should be developed devoid of sexual implication; thereby, avoiding the charge of being sexually discriminating. Only when a "bona fide participation qualification" based upon sex can be substantially defined and defended should any sexual restriction be instituted to regulate opportunities for participation. In all other instances, rules, regulations, policies, etc., should be non-sexual and must be applicable to each individual desiring participation. In all cases, the individual should be provided with an equal opportunity to qualify for a team position. Restrictions on participation should be issued solely on the merits of each individual's personal situation.

Application of Title IX to secondary school sport will take time and continued effort, tempered with patience. The generalities in which the law is written; the lack of specific guidelines; and, the hesitancy of many administrators to respond to the need for change will undoubtedly contribute to slow implementation. It is the writer's belief that Title IX, based on other social legislation experience, will not be implementated in a swift manner. A series of precedent setting judicial decisions will be required prior to any observable serious implementation becoming evident.

Title IX From A Legal Perspective: A Look At Historic Parallels

Prior to Title IX being signed into law, charges of discrimination in sport programs could only be initiated under the Equal Protection Clause of the Fourteenth Amendment to the Constitution or the Due Process Clause of the Fifth Amendment. Perhaps the most common challenge brought under the Fourteenth Amendment has been by women who were prohibited from participating on male teams by the rules or regulations of an athletic conference or association. In most instances, there were no parallel female teams.

The Equal Protection Clause of the Fourteenth Amendment required equal treatment of all individuals in public institutions. Female public high school students have successfully sued their schools in an effort to gain equal access to sport teams. In Reed v. Nebraska School Activities Association,[17] Haas v. South Bend Community School Corporation,[18] and Morris v. Michigan State Board of Education[19] the plaintiff sued their respective schools so that they as females would be allowed the opportunity to try to make the boys' team. In each instance the case involved either golf or tennis and each was similar in that female teams in the sport did not exist within the respective school programs.

In each case, the defendant school board pleaded that the restriction placed upon female participation on a boys' team and against other male teams was not a ruling of the school board but rather a restriction placed upon the school by the association governing the sport; and, that therefore, the prohibition not being issued by the school board was not the result of "state action" and thus was not in violation of the Equal Protection Clause of the Fourteenth Amendment. The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

In the Reed case, the court responded to the defendant's contention that the violation was not a "state action" by stating that Nebraska School Activities Association, which governs sport participation, is an organization of which the member schools are the base; that the schools are represented in the organization by their Superintendent, Principals, and Activity Directors; that these individuals propose and vote upon the rules which govern the sport programs; and, that therefore the rules and prohibitions resultant from such an association are, in fact, "state actions".

Again in the Reed case, "One justification advanced by the defendants for the rule prohibiting girls from playing golf with and against boys is that golf, unlike education, is a privilege, rather than a right. Even assuming that interschool competition in golf is not educational, the privilege-right distinction is not visible. See Graham v. Richardson, supra. The issue is not whether Debbie Reed has a "right" to play golf; the issue is whether she can be treated differently from boys in an activity provided by the state. Her right is not the right to play golf. Her right is the right to be treated the same as boys unless there is a rational basis for her being treated differently. The

burden of that issue rests upon the state - the defendants." The same issues were brought to light by the court in the other cases and the decision in each case was the same - in favor of the plaintiff.

In the Morris case two important distinctions should be noted. First, the Appeals Court judge upheld the lower court's injunction against the school board but modified it to apply only to non-contact sports - as contact sports were not involved in the controversy. Secondly, the judge in ruling in favor of the appellee noted that, "Even if the institution does have a girls' team in any non-contact interscholastic athletic activity, the female shall be permitted to compete for a position on the boys' team. Nothing in this sub-section shall be construed to prevent or interfere with the selection of competing teams solely on the basis of athletic ability."

From the above, it should be evident that the existence of state laws or rules and regulations of an athletic association which permit or require different treatment based upon sex is not considered a defense to charges brought under the Fourteenth Amendment. The same reasoning would apply for Title IX. In accordance with the concept of federal supremacy, the obligation to comply with federal law supercedes the obligation to comply with state laws or the rules and regulations of private associations..

In the preceeding cases, it should be noted, that the court did not state that the defendants could not under any circumstances prohibit members of one sex from participating in a specific activity. What the court did state was that such action was permissable so long as the "different" treatment was predicated on a "rational basis" and that the burden of proving the basis as being rational rested solely upon the issuer of the prohibition. Several interesting cases have turned on this very point.

In Frontiero v. Richardson,[20] Justice Brennan wrote,"...statutory distinctions between sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members." At issue in the Frontiero case were statutory rules that "a female member of the uniformed services seeking to obtain housing and medical benefits for her spouse must prove his dependency in fact, whereas no such burden is imposed upon male members." The sole justification presented by the government was that the action was taken as a "administrative convenience" measure. The District Court which ruled for the defendant did so because in their view the government instituted the rule based on the traditional view that the male was the "bread winner" and the female the "dependent". The lower court ruled that this was a reasonable assumption to make and that therefore the automatic assumption of wife dependency was justified because 99% of service membership was male. The Supreme Court in reversing the decision, in effect struck down tradition as being a viable defense for treating one sex differently from the other. The Supreme Court established that laws must apply equally to all and that each case must be determined based upon its individual merits.

Oft-times in sport, rules have been established prohibiting participation in certain activities by females, usually in contact sports, because of potential health and safety hazards. Again, the courts have rendered decisions on cases which have implications to this topic. Griggs v. Duke Power Co.[21] was "an action challenging the respondent's requirement of a high school diploma or passing of intelligence tests as a condition of employment in or transfer to jobs at the plant." The action was brought under Title VII of the Civil Rights

Act of 1964. The court declared that the requirements were not unlawful simply because a disproportionate number of Negroes were rendered ineligible for promotion, transfer, or employment, but that it was unlawful unless the requirements could be shown to be job related.

The case of Rosenfeld v. Southern Pacific Co.,[22] involved the plaintiff charging the defendant with discrimination solely based upon sex. The defendant company established what they felt were "bona fide occupational qualifications" for a position thus exempting females from consideration for appointment. The plaintiff charged that the defendant's actions were in violation of Title VII of the Civil Rights Acts of 1964. The defendant justified their restriction of these job opportunities for men for two reasons: "(1) the arduous nature of the work-related activity renders women physically unsuited for the jobs, (2) appointing a woman to the position would result in a violation of California labor laws and regulations which limit hours of work for women and restrict the weight they are permitted to lift."

In formulating a decision on the case, the court took into consideration: the Equal Employment Opportunities Commission's guidelines construing the "bona fide occupational qualification" exemption narrowly. In doing so it found that the state law was both in conflict with and superceded by Title VII. In summarizing its findings in favor of the plaintiff, the court sustained the EEOC position that: "The premise of Title VII, the wisdom of which is not in question here, is that women are now to be on an equal footing with men... Equality of footing is established only if employees otherwise entitled to the position, whether male or female, are excluded only upon a showing of individual incapacity... This alone accords with the Congressional purpose to eliminate

subjective assumptions and traditional stereotyped conceptions regarding the physical ability of women to do particular work."

Through Rosenfeld it was established that the safety of employees (male or female) could be assured by consideration of their individual capacities, or in the words of Griggs, by "measur(ing) the person for the job and not the person in the abstract." Via this case it was established that rules are prohibited which though clearly safeguard the health of some women, impose a limit upon women who might not have need of protection, and which fail to protect men who do.

Each of these cases, Griggs and Rosenfeld, have implications for those involved in sport administration. Rules adopted to prohibit participation in a sport activity must be germane to the activity, must not be based upon traditional stereotypes, and when adopted for health and safety reasons must be applied for the protection of all with each individual being evaluated not by class but on his/her own merits.

Throughout this paper, mention has been given to the fact that in numerous instances the language used in Title IX of the Education Amendments of 1972 has been identical to that used in the Civil Rights Acts of 1964, the only difference being that one is in reference to sex and the other to race.

The writer takes the posture that for significant implementation of Title IX to take place, a series of precedent setting judicial decisions will be necessary. It is the writer's prediction that the judicial history of Title IX will closely adhere to the already recorded racial discrimination decisions. The Supreme Court has recognized the parallel existent between racial and sexual discrimination as evidenced by its comments found in Frontiero v. Richardson. The Court comments as follows:

> "...Our statute books generally become laden with gross, stereotyped distinctions between the sexes and, indeed, throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children...and although blacks were guaranteed the right to vote in 1870, women were denied that right--which is itself preservative of other basic civil and political rights--until adoption of the Nineteenth Amendment half a century later."

State enforced sexual discrimination is virtually identical to racial discrimination in at least three significant ways:[23]

> "(1) each reflects a group stereotype based on imputed characteristics which, if not purely imaginary, are nonetheless inapplicable to many individual members of the group; (2) each provides governmental endorsement for the opinion privately held by members of a dominant group that, due to the supposed existence of these characteristics, each member of the subordinate group is inherently inferior; and (3) proceeding from the assumption that the stereotypes are accurate, each attempts to confirm and perpetuate the existence of the supposed characteristics by requiring every citizen to conform to a variety of rules, all of which reflect the belief that one group is in fact inferior to another."

As the basis for classification, sex and race share three important similarities:[24]

> "(1) by and large, members of the subordinate group are readily identifiable; (2) membership in the 'inferior' group is initially nonvolitional; and (3) once acquired, this membership can not be renounced."

At this point, a review of the major racial discrimination judicial decisions is in order. The first decision usually associated with racial discrimination is that of Plessy v. Furguson.[25] This case, decided in 1896, involved not an educational issue but rather one of transportation accommodations. The Supreme Court ruled, "That separate facilities did not violate the equal

protection clause so long as the separate facilities were equal." An earlier decision concerning education of Negro students was handed down in Massachusetts in which the court upheld the principle of "separate but equal". The Roberts v. The City of Boston[26] decision was rendered in 1849. The plaintiff, a minor of the Negro race, sued the city for damages because she was compelled to attend an all "colored" school. The court found in favor of the defendant thus supporting the "separate but equal" doctrine as it applies to education.

The Equal Protection Clause of the Fourteenth Amendment was brought to bear in the Sweatt v. Painter[27] case. Sweatt, a Negro, applied for admission to the University of Texas Law School. The University faced with the necessity of accepting a Negro, decided to create a new school for blacks at which point the plaintiff initiated suit. The court in listening to the arguments granted that the new school would certainly be separate but would be unequal to the existing white school in terms of facilities, faculty and staff, and prestige. Thus, the court rules for the plaintiff. A similar case heard by the Supreme Court in the same year as Sweatt (1950) was that of McLaurin v. Oklahoma State Regents.[28] McLaurin, an Oklahoma Negro, applied for admission to the Doctor of Education program. Oklahoma law provided for Negros to attend white colleges but required that instruction "shall be given...upon a segregated basis."[29] Thus, although admitted to the school, he was completely segregated. The court ruled for McLaurin and stated that "he must receive the same treatment at the hands of the state as students of other races."[30] Chief Justice Vinson, in writing his opinion, stated in part:

> "Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others.

> Those who will come under his guidance and influence must be directly affected by the education he received. Their own education will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained."[31]

The historical case of Brown v. Board of Education of Topeka,[32] was decided by the Supreme Court in 1954. This case consisted of a combination of cases from Kansas, South Carolina, Virginia, and Delaware. Although having evolved from different premised facts and different local conditions, a common legal question justified their being considered together in a consolidated opinion. In each of the cases, a minor of the Negro race sought admission to their community school on a non-segregated basis. In each instance, except Delaware, the federal district court denied relief to the plaintiff on grounds of the "separate but equal" doctrine announced by the Supreme Court in Plessy v. Furguson. Following arguments the court ruled for the plaintiff and in doing so stated that,

> "When we come to the question presented: Does segregation of children in the public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does."[33]

The court also noted that,

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore has the tendency to (retard) the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial(ly) integrated school system."[34]

The court thus concluded that, "in the field of education the doctrine of "separate but equal" has no place. Separate educational facilities

are inherently unequal. Therefore, we hold that the plaintiffs and other similarly situated for whom the actions have been brought are, by reason of the segregation compliant of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment."[35]

Having reviewed the preceeding cases the writer is of the opinion that in each instance the racial inference could be removed and substituted for with a sexual inference and in each instance the case nor the ultimate decision would be subject to any substantial change.

The ramifications of the Brown decision were significant. "Because of the pervasive and deep impact of the first Brown decision, the Supreme Court delayed granting specific relief and invited the U.S. Attorney General and the Attorneys General of all the States to submit their views regarding the court order. In this second opinion, (Brown v. Board of Education of Topeka, Kansas)[36] heard in 1955, the Court remanded the cases to the courts originally involved. Chief Justice Warren, writing for the Court, indicated that consideration could be given to the "public interest", as well as to the "personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis." The lower courts were directed to frame remedies - in a now famous phrase - "with all deliberate speed" that would permit desegregation of the schools."[37]

Could not Title IX be forced into following the same route as that of Brown if a substantial number of individuals and institutions cried out concerning the educational and social problems which might be created as a result of being forced to implement Title IX in its full context? Cormack

the possibility exists as precedent for such action has previously been established. The fact of the matter is that, two years following adoption not a single case, to the writer's knowledge, has been decided based upon Title IX nor have any federal monies been refused or discontinued as the result of Title IX violations. In effect, for all practical purposes, Title IX is not being enforced.

In the writer's opinion, the implementation of Title IX within the secondary school sport programs will be achieved at a more accelerated pace than that evidenced of the racial segregation/discrimination mandates issued by the Congress and state and federal courts. The writer holds this position because of a belief; that via the racial social legislation, the country, and its citizens, have generally become aware of the damages resultant from discrimination and will actively work towards its suppression in accordance with the mandates of the law; that political and educational leaders are sufficiently aware of the parallels existing between sexual/racial issues and the predictability of future judicial decisions concerning the issues; and, that the implementation of Title IX within secondary school sport programs will not require single sex sport teams but to the contrary will encourage "separate but equal" sport programs excepting for the provision that individuals who can not be afforded competition equal to their ability within their own sport program be permitted to try out for a position on the other sex's team, providing that such an opportunity represents upward mobility with respect to "challenge" as earlier defined.

Footnotes

1. 20 USC §1681-86.

2. "Sex Discrimination - A Bar To A Democratic Education: Overview of Title IX of the Education Amendments of 1972", Alexandra P. Buek and Jeffrey H. Orleans, Connecticut Law Review, Volume 6, Fall, 1973.

3. "Education and Women's Rights", Robin Dorr, The Education Digest, March, 1973, pp 10-11.

4. Ibid., p. 11.

5. 42 USC § 2000d, et. seq.

6. Buek and Orleans, Op. Cit., p. 2.

7. Hollander v. The Connecticut Interscholastic Athletic Conference, Inc., No. 12-49-27, Conn. Sup. Ct., 1971.

8. "Revolution in Women's Sports", _____, Women's Sport, September, 1974, p. 34.

9. Congressional Record, House 4250, June 4, 1972.

10. Buek and Orleans, Op. Cit., p. 4.

11. "Title IX - Implication for Physical Education and Athletics", Carolyn I. Polowy, a paper presented at the Spring Conference, Eastern Association, Intercollegiate Athletics for Women, March, 1974.

12. "What Constitutes Equality For Women In Sport?", Bernice Sandler, et al., Project on the Status and Education of Women, Womens Association of American Colleges, Washington, D. C., 1974.

13. "She Can Play As Good As Any Boy", Celeste Ulrich, Phi Delta Kappan, October, 1973, p. 114.

14. Polowy, Op. Cit.

15. Ibid.

16. "Legal Tools To Fight Sex Discrimination", Charlotte B. Hallam, Phi Delta Kappan, October, 1973, p. 129.

17. 341 F. Supp. 258 (1972).

18. 289 N.E. 2d 495 (1972).

19. 472 F. 2d 292 (1973).

20. 93 S. Ct. 1764 (1973).

21. 401 U.S. 424 (1971).

22. 444 F. 2d 1219 (1971).

23. "Sex Discrimination", John D. Johnson and Charles L. Knapp, New York University Law Review. October, 1971, p. 739.

24. Ibid., p. 739.

25. 16 S. Ct. 1138 (1896).

26. 59 Mass. 198 (1849).

27. 70 S. Ct. 848 (1950).

28. 70 S. Ct. 851 (1950).

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